

**REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA**

**A REVIEW OF THE DIVISION OF LABOR STANDARDS
ENFORCEMENT'S HANDLING OF THE CROWE V. SIMPSON
ATTORNEY FEES DISPUTE**



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August 7, 1991

P-033

Honorable Robert J. Campbell, Chairman
Members, Joint Legislative Audit Committee
State Capitol, Room 2163
Sacramento, California 95814

Dear Mr. Chairman and Members:

Summary

The Office of the Auditor General was asked to provide information on the litigation of the award of attorneys' fees in the case of Crowe v. Simpson. This case involved the attempt of the Division of Labor Standards Enforcement (division) to enforce certain provisions of the Labor Code, which, according to the division, prohibited minors under the age of 16 from conducting door-to-door sales. The division is part of the Department of Industrial Relations (department). Attorney David Hicks represented some of the parties against whom the regulations were being enforced. In July 1986, the division and attorney Hicks agreed to settle the case, except for the determination of whether Hicks was entitled to any fees for his representation of the parties. This settlement agreement was approved by the court and entered as a "stipulated judgment" on January 2, 1987, with the issue of the fees still pending.¹

¹ A stipulated judgment is an order of the court on an issue or issues that the parties have agreed to.

Based on our review, we determined that the department has spent approximately \$248,000 for salaries, benefits, and expenses in litigating the attorney-fee issue. This amount includes funds paid to the San Francisco law firm of Bronson, Bronson & McKinnon, the division's private counsel, for representing the division in the matter, as well as fees paid to the court-appointed referee and salaries and benefits paid to the department and the division's staff while working on the matter. In addition, the court has awarded approximately \$872,000 to attorney Hicks as fees and costs applicable to his representation of the parties in the case. However, as of July 1, 1991, the division is appealing this award. Should attorney Hicks prevail, total costs of the litigation would exceed \$1.2 million, which includes approximately \$86,000 in interest accrued as of January 31, 1991. (See the table on page 8 for a breakdown of potential expenses.) Finally, we were unable to determine if the amount of attorneys' fees requested by attorney Hicks was comparable with those amounts requested in similar cases because insufficient data were available.

Background

The department is responsible for fostering, promoting, and developing the welfare of the wage earners of the State, improving their working conditions, and advancing their opportunities for profitable employment. The division is charged with enforcing wage orders promulgated by the Industrial Welfare Commission and enforcing various state laws, including those relating to wages, hours, working conditions, and child labor. The division is headed by the labor commissioner.

In 1983, the division, under Labor Commissioner C. Robert Simpson, attempted to enforce provisions of law which, according to the division, prohibited the door-to-door sale of goods by minors under the age of 16. The division's position was that Section 1308 of the Labor Code prohibited this type of sale. In response to the division's attempted enforcement, some of the parties hired attorney David Hicks to represent them. Hicks' position was that the attempted enforcement violated his clients' constitutional rights. As a result, he sought to prevent the division

from enforcing the Labor Code provisions by obtaining a court injunction against the division in the case of Crowe v. Simpson. Hicks filed the complaint for the Crowe v. Simpson injunction in the Alameda County Superior Court on September 24, 1985. In March 1986, while Crowe v. Simpson was pending in court, the labor commissioner created new regulations allowing some of the activities that were previously prohibited. The parties agreed to settle the Crowe v. Simpson case, along with two other cases, by a stipulated judgment signed by their attorneys on July 2, 1986.² The stipulated judgment recognized that the labor commissioner created new regulations allowing some door-to-door sales by minors. The court approved the judgment on January 2, 1987. In addition, it later determined that the plaintiffs were entitled to attorneys' fees and referred the issue of the amount of those fees to a court-appointed referee.

Scope and Methodology

The purpose of this review was to independently develop and verify information on the attorneys' fee dispute between attorney Hicks and the division. To obtain background information on the history of the litigation, we interviewed and obtained documents from attorney Hicks and representatives of the division, including the current acting labor commissioner and the chief legal counsel.

To determine if the division complied with the contracting provisions of the Government Code, the Public Contract Code, and the Labor Code in obtaining the services of Bronson, Bronson & McKinnon, the division's private counsel, we obtained and reviewed the contract between the department and the private counsel and the amendments to that contract. We obtained a legal opinion from our legal counsel that found no violations of law when the division obtained the services of its private counsel. However, we noted that the private counsel began work before

²The two other cases were Simpson v. Winters and Three Unemployed Teenagers v. the Division of Labor Standards Enforcement.

approval of the contract by the Department of General Services. Although the Department of General Services did approve the contract 18 days later, the State might have incurred some risk of liability for the work if the approval had not been granted.

To determine if the division had appropriately paid its private counsel, we obtained accounting records from the department as well as copies of invoices submitted by the private counsel. We determined that, although the contract had been amended to increase the maximum amount payable from \$29,000 to \$180,000 through June 30, 1991, the private counsel had submitted invoices for services and expenses totaling approximately \$214,000 as of March 20, 1991. Although the division attempted to increase the amount available to pay for these services, its request was denied because of a freeze in spending imposed by the governor. The department had paid approximately \$176,000 to the private counsel as of February 28, 1991. We obtained an opinion from our legal counsel indicating that the division probably would not be liable for any amount above \$180,000 since the contract provided that the State's liability was not to exceed that amount. The contract provides that the private counsel has the right to withdraw from the case.

Neither the department nor the division maintains records on the amount of time its employees spent working on the attorney-fee dispute. Therefore, to estimate these expenditures, we obtained statements from the department and the division's former and current professional employees on the estimated number of hours that they worked on this issue. We also obtained salary and benefit data from the department.

Finally, to determine if the hourly rates awarded to attorney Hicks were comparable with those in other cases in which attorneys' fees were awarded to the parties opposing the division, we interviewed the division's chief legal counsel and reviewed various cases. We also identified and reviewed one case in which fees were awarded under the federal Civil Rights Attorney's Fees Awards Act of 1976. We did not attempt to identify a representative sample of these cases. We then identified the amounts awarded

and the hourly rates of pay for those cases in which such data were available. However, we found that the hourly rates of fees awarded were not comparable because they were awarded in different geographical areas and during different periods when factors such as inflation may have affected the rates. While we report this information, we did not adjust these amounts and rates of pay to account for the differences in time.

**Chronology of
Significant
Events in the
Litigation**

On February 9, 1987, attorney Hicks filed a motion for attorneys' fees and costs seeking a total of approximately \$1.75 million under Section 1988 of Title 42 of the United States Code (the Civil Rights Attorney's Fees Awards Act of 1976). Hicks claimed that he was entitled to approximately \$680,000 in attorneys' fees, based on the calculation of 5,093.1 hours that his firm spent in defending his clients against the various enforcement actions. In addition, Hicks sought approximately \$1.02 million as an enhancement factor or "multiplier," which is an increase in the fee award based on factors such as the public importance of the case, the delay in receiving payment, and whether the payment of the fees was contingent upon the outcome of the case. Finally, Hicks sought approximately \$52,000 in litigation costs and expenses.

On March 4, 1987, the division responded by denying that Hicks was entitled to fees under the federal Civil Rights Attorney's Fees Awards Act of 1976. The division maintained that since it acted in good faith in administering its regulatory and enforcement powers in interpreting Section 1308 of the Labor Code, the request for fees should be denied. In addition, the division indicated that Hicks' advancement of the public interest was minimal and that the division's attempt to enforce the provisions of the Labor Code did not constitute a serious threat to constitutional rights. The division also noted that if the attorneys' fees were awarded, the taxpayers of the State would bear the cost. Finally, the division stated in its response that the amount of the request for attorneys' fees was unreasonable and, as a result, should be denied.

On February 24, 1988, the court determined that the State should pay Hicks' attorneys' fees under the Civil Rights Attorney's Fees Awards Act of 1976. It also ordered the referee to recommend the appropriate amount of the award, excluding the multiplier. On September 1, 1988, the department entered a contract with Bronson, Bronson & McKinnon to represent the State in the hearing with the referee. On July 6, 1989, the court ordered the State to pay \$40,575 in fees to the referee. On January 16, 1990, the court approved the referee's recommendation and ordered the State to pay a total of approximately \$772,000 to Hicks and his attorneys in fees and costs incurred through November 16, 1989. In addition, the court ordered the State to pay an additional \$4,500 to the referee. On April 5, 1990, the court granted an additional \$100,000 to Hicks as a result of a multiplier.³ The court noted in its order that one reason for the award of the multiplier was that the "defense was difficult with some tactics that were obstructionist," a finding that the division denies and has disputed in its appeal. In awarding the multiplier, the court also noted that the case involved issues of public importance that were litigated and resolved. In total, the court ordered the State to pay approximately \$917,000 as of April 1990.

However, this amount does not include interest that may accrue on the judgment. Hicks may be entitled to interest at the rate of 10 percent per year on approximately \$772,000 of his judgment for attorneys' fees accruing from January 16, 1990, and on the \$100,000 from April 5, 1990, until the date the judgment is paid. Section 685.010(a) of the Code of Civil Procedure sets the rate of interest to be paid on judgments (including judgments for attorneys' fees) at 10 percent per year from the date of the judgment until the date the judgment is paid. An opinion by the

³The department stated that Hicks' claim of a 1.5 multiplier was actually a 2.5 multiplier. On September 1, 1989, Hicks submitted his brief in support of a multiplier, requesting a multiplier of 3.5. The court ultimately awarded a multiplier of 1.2 on \$500,000 of the judgment, or \$100,000.

California attorney general indicates that this code section applies to judgments against the State. If the Court of Appeal upholds the award, approximately \$86,000 will have accrued as of January 31, 1991.

On June 19, 1990, the State filed a motion for a new trial. The court denied the motion and, on July 26, 1990, it ordered the State to pay Hicks \$75,000 in interim attorneys' fees. On July 31, 1990, the State filed its notice of appeal of the judgment with the California Court of Appeal in San Francisco. The appeal is pending as of July 1, 1991. However, after settlement talks conducted through the Court of Appeal between Hicks and the division proved unsuccessful, Hicks sought to enforce the award of \$75,000 in interim attorneys' fees by attempting to have the State declared in contempt of court for its failure to comply with the July 1990 order. The State opposed the application on the grounds that the pending appeal "stays," or holds in abeyance, enforcement of the interim order. In addition, the State claimed that the use of a contempt proceeding was an inappropriate method of enforcing an award.

On March 22, 1991, the Alameda County Superior Court denied Hicks' application for contempt. However, the court denied the application "without prejudice," a decision which allowed Hicks to return to court to again request the interim fees. On April 15, 1991, Hicks submitted a petition for a writ of mandate seeking to force the director of the State Department of Finance to certify the order to the state controller to begin the payment process for the interim fees. However, on June 11, 1991, the court denied the petition. According to the acting labor commissioner, the division continues to fight the award of attorneys' fees in its appeal because it has been advised by its legal counsel that there is a reasonable chance of having the award reversed in whole or in part. The following table shows the expenses the division could incur if its appeal is unsuccessful.

**Breakdown of Expenses Incurred
by the Department if Its
Appeal Is Unsuccessful**

Source of Expenditure	Amount of Expenditure
Contract with private counsel	\$ 176,000
Salaries and benefits	27,000
Referee's fees	45,000 ^a
Original award of attorneys' fees	772,000
Multiplier	100,000
Interest	86,000
Total	\$1,206,000

Note: All expenditure data were calculated as of January 31, 1991, except the data for the contract with private counsel. The contract data were calculated as of February 28, 1991.

^aAlthough the department has paid \$45,000 to the referee, on July 6, 1989, the court determined that it would later decide whether the State should be reimbursed for part of the payment.

Similar Cases

To determine if the fees requested by attorney Hicks were comparable with those requested in similar cases, we attempted to determine if the division had litigated any similar cases in which attorneys' fees were awarded to the opposing party. However, the division's chief legal counsel indicated that he was aware of only four cases in which attorneys' fees had been awarded to the party opposing the division.⁴ None of these cases was substantially similar in the amount of fees sought. Furthermore, none of these cases appeared to involve awards of attorneys' fees under the federal Civil Rights Attorney's Fees Awards Act of 1976, the legal authority under which attorney Hicks sought to recover his award. The federal Civil Rights Attorney's Fees Awards Act of 1976 does not include a maximum hourly rate of attorneys' fees that may be recovered in a case.

⁴Although the chief legal counsel stated that he was aware of four cases in which attorneys' fees had been awarded against the division, the division was unable to locate records of one of the cases.

In one of these three cases, Schwartzman v. State of California Health and Welfare Agency (1987, Napa County Superior Court, Case Number 49457), the attorneys for the petitioner sought to recover attorneys' fees against the State for work on a petition for a writ of mandate. The court granted the \$27,800 in fees and costs under Section 98.7 of the Labor Code. This amount was based in part on the hourly rates of pay which ranged from \$75 to \$90 per hour, charged by the attorneys. Also, the court based the amount on the 242 hours that the attorneys spent on the case. The court noted that the total should be increased because of factors such as the complexity and novelty of some of the issues involved. In addition, the court noted that the rates charged were lower than those in larger metropolitan areas. As a result, the court awarded a 40 percent multiplier.

We attempted to determine the hourly rate of pay for the other two cases to compare them with the rate charged by attorney Hicks. However, we were unable to obtain enough information to make this determination in either of the cases.

In one recent case involving fees under the federal Civil Rights Attorney's Fees Awards Act of 1976, the State was ordered to pay a substantially higher award than in the case cited above. In this case, Central Valley Chapter of the Seventh Step Foundation v. Younger (Alameda County Superior Court, Case Number 497394-6), the court ordered the State to pay attorneys' fees and costs under the federal Civil Rights Attorney's Fees Awards Act of 1976, as in Crowe v. Simpson, and under Section 1021.5 of the Code of Civil Procedure.⁵ On November 30, 1990, the court awarded the attorneys a lump sum of \$475,000 in prejudgment fees, excluding interest and costs. Later, the court awarded the attorneys approximately \$314,000 in postjudgment

⁵ According to the department, this case is distinguishable from Crowe v. Simpson in that it involved fees payable on a contingency basis and there was no question that the claim for fees was made, at least partly, under the Civil Rights Attorney's Fees Awards Act of 1976.

fees, which included a multiplier of 1.5. The court's postjudgment award was based on 881 hours of work by attorneys and law clerks. The award was based on fees ranging from \$100 per hour for law clerk services to \$300 per hour for one attorney's services. The average rate for these services, excluding the multiplier, was approximately \$237 per hour.

As noted on page 5 of this report, attorney Hicks requested approximately \$680,000 for the 5,093.1 hours he claimed he and his staff spent on the case. The attorneys' fees Hicks requested were based on rates ranging from \$60 per hour to \$220 per hour. The average rate for all services was approximately \$134 per hour.

**The Department
Has Spent
Approximately
\$248,000
Defending
Against the
Claim of
Attorney's Fees**

The department had paid approximately \$176,000 to its private counsel to represent it in the attorney-fee dispute in Crowe v. Simpson as of February 28, 1991. The department hired its private counsel in September 1988 to assist in litigating the claim for attorney fees in Crowe v. Simpson. According to the division's chief legal counsel, the division did not have sufficient skill or resources to handle a claim of this type. In addition, the department has paid approximately \$45,000 to the referee appointed by the judge to conduct a hearing on the evidence.

According to department records and statements from current and former employees, the department has also spent approximately \$27,000 in salaries and benefits on the seven professional employees who worked on the attorney-fee issue in the Crowe v. Simpson case. These employees include the current acting and a former labor commissioner, a current and a former chief legal counsel for the division, a chief legal counsel for the department, a former industrial relations representative, and a former law clerk. The department noted that salaries and benefits are considered overhead and would have been incurred regardless of the work on Crowe v. Simpson.

These employees performed various tasks on the attorney-fee dispute. For example, a former chief legal counsel stated that, in fiscal year 1986-87, he spent approximately 40 days in activities such as making court appearances, attending conferences, and preparing correspondence and memoranda. The department spent approximately \$12,700 in salary and benefits on this employee for his work on the attorney-fee issue. In addition, the former industrial relations representative stated that he spent approximately 350 hours reviewing documents related to the attorney-fee issue during the period from October 1, 1987, through April 1, 1988. The department spent approximately \$6,200 in salary and benefits on this employee for his work on the attorney-fee issue.

We conducted this review under the authority vested in the auditor general by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the scope and methodology section of this letter report.

Respectfully submitted,



KURT R. SJOBERG
Auditor General (acting)

Staff: Sam D. Cochran, Audit Manager
James D. Lynch, Jr.

**Response to
the Audit**

Department of Industrial Relations

DEPARTMENT OF INDUSTRIAL RELATIONS

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July 31, 1991

James Lynch, Esq.
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California Legislature
660 J Street, Suite 300
Sacramento, CA 95814

Re: Response to Audit Report--Crowe v. Simpson

Dear Mr. Lynch:

On behalf of the Department, I thank you for the opportunity to append a response to the audit. As the audit says, this matter is now before the Court of Appeal, and involves very substantial amounts of potential liability for the state. Our response is more detailed than it would be otherwise but not because we see grave error in the facts related--a diligent reader of all of the audit and its footnotes and methodology section would see the matter in perspective. Rather, we are deeply concerned with the potential for selective quotation of portions out of context, whether for press coverage or quotation to the Court of Appeals. A quick review of the track record of our opponent, Mr. Hicks, shows that tireless efforts on many fronts, in the media and the courts, have been the rule in this dispute.*

Proportionality: The Record As To Hicks' Demand Shows That The Total Demand Was For Over Two Million Dollars, And, Although Only A 1.2 Multiplier Was Awarded, Multipliers Of 3.5 And 2.5 Had Been Demanded.

The Audit looks at both the amounts awarded at the end of the litigation process, as well as the Division's decision to spend monies throughout the litigation process. While the audit correctly relates the facts as to the 2.5 and 3.5 demands for multipliers, we differ from relegating that fact to the status of a contention, and discussion of the contention to a footnote. The fundamental reason for retention of private counsel was the extraordinarily demand for a multiplier of 2.5 times the amount claimed for time spent (in February); which was then raised to 3.5 times just before the hearing, at which private counsel appeared. The fundamental wisdom of that course is illustrated in the record, which we would have preferred the audit to relate as facts:

February, 1989	Demand 2.5 times lodestar	\$1.8 Million total
September, 1989	Demand of 3.5 times lodestar	\$2.5 million total

*The Office of the Auditor General's comment: While the department does not dispute the facts in our report, it makes statements and cites figures that we did not attempt to verify.

Result, June 90 Award (\$700,000) plus, 1.2 times
 the first \$500,000 of lodestar (i.e.,
 \$100,000) \$0.80 Million final total

Taking the demands in chronological order, for the following reasons we believe the record is clear enough to characterize these demands as facts, rather than "contentions."

Reading just Mr. Hick's February motion papers led to the conclusion that *only* a multiplier of 1.5 had been demanded. This is certainly the impression which would be left by Mr. Hicks' moving papers at page 8, lines 5-8, filed February 9, 1987, unless one sums up the amounts demanded.

Mr. Hicks wrote (emphasis added):

The court is asked to find reasonable attorneys' fees in the amount of \$751,131.00 and to add to that a fee enhancement factor of 1.5 \$1,096,696.50 [sic] and costs and litigation expenses in the sum of \$59,614.66 to comply with federal requirements of 'fully compensating' counsel.

That sentence creates the impression of a request for a fee of \$1,096,696.50 and a multiplier of 1.5.

That impression, however, is false. On July 22, 1988, Mr. Hicks submitted a letter to the Referee.¹ His letter claimed a total lodestar, as of that date, of \$731,131.00. He multiplied that figure by 2.5 to produce a total requested fee of \$1,827,827.50. However, the language in the letter conceals the fact that the computations offered the referee used a multiplier of 2.5. The letter's sole description of the multiplier is a line reading: "Fee enhancement (1.5)." It indicates an amount of \$1,096,696.00, which is 1.5 times the claimed lodestar. But Mr. Hicks added that amount to the lodestar to produce a final figure of \$1,827,872.50. That amount is 2.5 times the lodestar. By this slight-of-hand, the letter-brief created the impression that petitioner Hicks was claiming a multiplier of 1.5, whereas, if the Court had adopted his figures, the multiplier would have been 2.5.

The 3.5 multiplier demand is even more straightforward, and set out in the prayer to the Court on page 44 of the brief of September 18.

Central Valley Seventh Step Foundation As A Comparable Case.

This attorneys fee award case is cited for comparison. However, we think that it arises on such different facts, and in such a different legal context, that its use is quite limited. The audit report

¹See page 3 of the attachments, letter Hicks to Referee Barber, 22 July 88.

cautiously notes that no sample or survey of attorneys fee award cases was attempted and, also correctly, notes that the Seventh Step award was made in a case where there was no question that the claims won came under 42 U.S.C. § 1983. If the case is to be used in the audit for any purpose, then the report should consider, first, that there is a more fundamental distinction between it and Crowe and, second, that far more legal work in far fewer hours was billed, according to history of the case outlined in Seventh Step Court (1989) 214 Cal.App.3d 225, 262 Cal.Rptr. 496, than the 5,000+ hours claimed by Mr. Hicks for settling three cases without trial.

The fundamental ground for distinguishing Central Valley is the contingent nature of the plaintiffs' counsels' fees there. The audit record is difficult on this point, and not by accident. Contingency is one of the justifications Mr. Hicks offered² for the size of the multiplier sought, as well as the basis for his advocating that his fees for past work nonetheless be upped in value to his current rates, rather than the lower rates charged at the time the work was performed. On appeal, the issue of "current" vs. "historical" rates of compensation, which turns on whether the compensation was contingent, is a significant one. The audit record should state as a factual conclusion that Mr. Hicks was paid as he worked, albeit by an unusual device. The note that this is merely a "contention" is somewhat inaccurate, and indeed the referee found Hicks' claim of contingency payment "wholly failed."

The audit would be more accurate on this costly issue were it to find, in lieu of the footnote as to mere Department contentions, that:

²In Mr. Hicks' February 9, 1987 papers; Motion for Attorney's Fees and Costs, Declaration In Support and Proposed Findings and Order, pp.20-22; he told the Court that:

The risk of nonpayment was unusually great in this case. Counsel was required to expend a tremendous amount of time and expense with little assurance of ultimate repayment. As injunctive relief was the primary remedy sought, receipt of full compensation was contingent.

Counsel had no guarantee of full payment, no agreement to require regular cash flow to support the overhead of providing those services, and nowhere to turn for financial [sic] if the case were lost.... (Ibid., at p. 20.)

* * *

All of the following was handled by Hicks and Nolan pursuant to its agreement with the clients where full compensation was contingent on outcome.... (Mr. Hicks' Declaration filed with his fee motion, at p. 6:3-5; CT.)

and, in addition, plaintiffs' counsel in Central Valley 7th Step was on contingency, whereas Mr. Hicks appears to have been paid between \$100,000 and \$500,000 through non-recourse loans by organizations employing child labor, run by convicted racketeer,³ Mr. Gerald Winter.

The documentary record for Mr. Hicks' fee arrangement as not contingent is indisputable. He was paid perhaps as much as \$500,000, perhaps more. Mr. Hicks ultimately admitted that he had been paid by Mr. Winters' organization. His arrangement required him to pay back the money, but solely if he recovered court-awarded attorneys fees from the State of California. If he did not recover court awarded attorneys fees, then he was entitled to keep the money. Asked how much he had been paid under this arrangement, Mr. Hicks testified that he could not remember, but that it was between \$100,000 and \$500,000.⁴ Based on that testimony, the Referee held that "[t]he evidence presented by Mr. Hicks wholly failed to support his claim of a contingent fee contract."⁵

The description of the work done which led to an award of attorneys fees to plaintiffs' counsel in Central Valley is found in the appellate decision, cited above. The audit report there notes the size of the award, and post-judgment expenditures of 400 hours. Here the expenditure is over 5,000 hours, for settling three cases. For far fewer hours, counsel in Central Valley made two trips to the Court of Appeal, five summary judgment motions, and one trial. The record of hours vs. accomplishments in Central Valley fairly cries out for an audit report conclusion of *INFLATED HOURS*.

Costs To DIR Have Been Inflated By Motions, Suits, And Ancillary Proceedings Other Than The Appeal.

While the funds expended by the Department for private counsel, and its own staff time, are proportionate to the reductions in Mr. Hicks' claims which have been accomplished, the record presented suggests an audit finding of clear abuse of the fee litigation by Mr. Hicks' distracting efforts to win his fees in every manner except completing the basic work to perfect the appeal. If waste of state resources is the target, an obvious one was presented by the records here, and should be included in the report. Ancillary proceedings were started in the main case after the filing of the judgment and notice of appeal had divested the trial

³The indictment, and sentence of over three decades in federal prison under the Racketeer Influenced and Corrupt Organizations Act (RICO), were furnished the audit team in light of Mr. Hicks' contention that his litigation had been inspired and underwritten by impoverished, unemployed teenagers.

⁴Referee's transcript, v. I, pp.115-123. See in particular, pp. 118:17-21, 121:25 to 122:9, and 123:1-24.

⁵Referee's Report, pp. 36:14 - 37:1.

James Lynch
Page 5
July 31, 1991

court of jurisdiction. There was also independent litigation under new captions styled as new suits. Both are evidenced, and their cost to the state is recorded, in the billings records for private counsel and Alameda court records reviewed by the audit team.

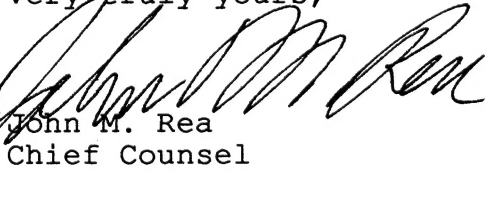
The audit file has the billings up through February 28, 1991, and so these are summarized, rather than attached. A count of the costs of defending against Mr. Hicks' efforts *other than completing the appeal*, which were incurred after notice of appeal had been filed on July 31, 1990, covers at least three hearings, none of which produced any relief for Mr. Hicks. A similar pattern of running up state expenses by commencing unsuccessful ancillary litigation against various cabinet and constitutional officers after February 28, 1991 appears in later court records. From the date that the notice of appeal moved jurisdiction over Mr. Hicks' fees to the Court of Appeal, the amounts spent by the Division on private counsel to counter these unsuccessful shenanigans at the trial level total \$19,975.25. This is 64% of the total hours and 63% of the total money spent during this post-appeal to February 28, 1991 period.

Conclusion.

We request that the Division's and Departments' views on the above issues be made available to those reading the report by incorporation or attachment to the body.

Thank you again for the opportunity to offer comments.

Very truly yours,



John M. Rea
Chief Counsel

JMR:clu
(clumachd-lit-var-dlse"7AuditResponse")

Encls.: (w/hard copy only)
Billings for Services provided by Bronson, Bronson & McKinnon
December 1990, January 1991, February 1991

cc: (w/o encls.)
Lloyd W. Aubry, Jr., Director
James Curry, Acting Labor Commissioner
H. Thomas Cadell, Chief Counsel - DLSE
Robert Tollen, Esq.-Bronson, Bronson & McKinnon

**cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
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Senate Office of Research
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